

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0301

State of New Hampshire
Department of Environmental Services

v.

Watermark Navigation Systems, LLC

CONSENT DECREE

NOW COME the parties, the State of New Hampshire Department of Environmental Services by and through their attorneys the New Hampshire Office of the Attorney General (“State” or “Department”) and Watermark Navigation Systems, LLC, by and through its attorney, Mark D. Wiseman (“Defendant”), and hereby agree to undertake the following in settlement of the claims asserted by the State in this case.

FACTS

1. This Consent Decree is entered into, by, and between the State and the Defendant to provide for the resolution of the State’s claims for injunctive relief and civil penalties against the Defendant for violations of the New Hampshire Fill and Dredge in Wetlands Act (RSA chapter 482-A, “Wetlands Act”), in Lake Sunapee on July 29, 2008.
2. The State filed an amended petition in this case on October 2, 2008 (the “State’s Petition”), seeking both injunctive relief and civil penalties for the unauthorized deposition of boulders in Lake Sunapee
3. The Defendant admits to depositing boulders into Lake Sunapee from its barge, but denies that it violated the Wetlands Act.

4. The parties now enter into this Consent Decree in order to avoid the expense and uncertainty involved in litigation and to resolve all the issues raised in the State's Petition.

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

CIVIL PENALTY

5. The Defendant shall be assessed a penalty of \$12,500 (Twelve Thousand Five Hundred Dollars) for the alleged violations described in the State's Petition. Of the total amount assessed, the Defendant shall pay the State \$7,500 (Seven Thousand Five Hundred Dollars) within thirty days of the entry of this Consent Decree as an order of the Court.
6. The remaining \$5,000 (Five Thousand Dollars) shall be suspended but shall become immediately due if:
 - (a) The Defendant violates any provision of the Wetlands Act or its attendant administrative rules, or any condition of a wetlands permit, during the one year period beginning on the date this Consent Decree is entered as an order of the Court, or;
 - (b) The Defendant violates any provision of this Consent Decree.
7. All payments shall be paid by check drawn in the name of "Treasurer, State of New Hampshire," and mailed to Department of Justice, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire 03301, Attn: Evan J. Mulholland.

INJUNCTIVE RELIEF

8. The Defendant shall only dispose of rocks, and all other materials removed from a waterbody, in accordance with conditions as specified in a wetlands permit issued by the Department of Environmental Services.

TIME OF THE ESSENCE

9. In every instance where a particular date is established for compliance with a term in this Consent Decree time is of the essence in compliance with said term. Compliance with each deadline must be achieved on each respective date by the Department's close of business, namely 4 p.m. Failure to meet any deadline shall constitute a violation of this Consent Decree. If a deadline falls on a weekend or a holiday (as defined in RSA 288:1), the deadline shall be the following business day.

MODIFICATION AND AMENDMENT

10. Any modification or amendment to any portion of the requirements for performance specified herein is subject to, and shall be effective only upon, the prior written approval of the State. Permission to extend any deadline specified herein shall not be unreasonably withheld.

RETENTION OF JURISDICTION

11. The Court shall retain jurisdiction to enforce, including by contempt order, the terms and conditions of this Consent Decree, to make modifications necessary to effectuate compliance with the Consent Decree, and to resolve all disputes arising hereunder as may be necessary or appropriate for the construction and execution of this Consent Decree. If the Defendant fails to comply with the requirements in this Consent Decree within the specified timeframe, the Defendant may be found in contempt of court and the Court may order relief as it deems justified.

OTHER TERMS

12. It is the intention of the parties that this Consent Decree be entered and enforced as an order of the Court. Once the order is entered by the Court, the Defendant acknowledges

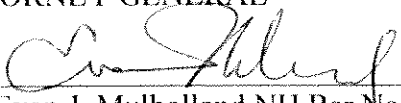
that any violation of the agreements contained herein shall be cause for them being adjudged in contempt of court.

13. The State's failure to enforce any provision of this Consent Decree after any breach or default shall not be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of its right to enforce each and all of the provisions of this Consent Decree upon any further breach or default.
14. The effective date of this Consent Decree shall be the date on which it is entered as an order of the Court.
15. This Consent Decree shall be construed in accordance with the laws of the State of New Hampshire.
16. The parties agree that the civil penalty imposed hereunder is a fine or penalty payable to and for the benefit of a governmental unit pursuant to Section 523(a)(7) of the Bankruptcy Code, 11 U.S.C. § 523, and that if brought forward, the total amount of the civil penalty is non-dischargeable in bankruptcy.
17. The civil penalty imposed herein shall not be tax deductible.

STATE OF NEW HAMPSHIRE

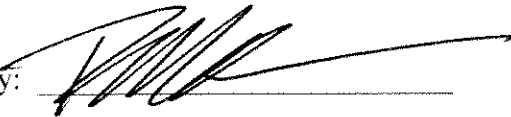
KELLY A. AYOTTE
ATTORNEY GENERAL

Dated: Feb. 2, 2009

By: 
Evan J. Mulholland NH Bar No. 18038
Assistant Attorney General
33 Capitol Street
Concord, New Hampshire 03301

WATERMARK
NAVIGATION SYSTEMS, LLC

Dated: 1/28, 2009

By: 

Its Managing Member

Dated and entered this _____ day of _____, 2009.

SO ORDERED.

Presiding Judge

THE STATE OF NEW HAMPSHIRE

Merrimack County Superior Court

163 N. Main Street

P. O. Box 2880

Concord, NH 03301 2880

603 225-5501

NOTICE OF DECISION

EVAN MULHOLLAND ESQ
ENVIRONMENTAL PROTECTION BUREAU
33 CAPITOL STREET
CONCORD NH 03301-6397

08-E-0301 State of NH DES v. Watermark Navigation System, LLC a/k/a

Please be advised that on 2/20/2009 Judge Conboy made the following order relative to:

Consent Decree ; Approved

"So ordered."

02/23/2009

William McGraw
Clerk of Court

cc: Mark D. Wiseman, Esq.